

EXHIBIT B

CASE NO. C-0668-20-H

ROGELIO QUINTERO, ET AL. § IN THE DISTRICT COURT
V. §
§ HIDALGO COUNTY, TEXAS
§
BIG STAR BUILDERS, INC., §
ET AL. § _____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now come Rogelio Quintero and Cynthia Quintero, Plaintiffs, complaining of Big Star Builders, Inc. ("BSB"), Synovus Bank ("Synovus"), RoundPoint Mortgage Company ("RoundPoint"), Service Finance Company, LLC ("SFC"), Nicolas Quintero ("Nicolas"), Juan Sebastian Quintero ("Sebastian"), and Equisolar, Inc. ("Equisolar"), Defendants, and would respectfully show to the Court as follows:

1. Plaintiffs intend that discovery in this case be conducted pursuant to Texas Rule of Civil Procedure ("TRCP") 190.4.
2. Pursuant to TRCP 193.7, Plaintiffs hereby give notice of intent to use at hearings and trial any and all things produced to Plaintiffs in this case.
3. Plaintiffs are natural persons, who reside in Hidalgo County, Texas.

C-0668-20-H

4. BSB is a California for-profit corporation, which may be served with process in Texas, by serving its Texas registered agent, Registered Agents Inc., at 5900 Balcones Drive, Ste. 100, Austin, Texas 78731.
5. Synovus is a foreign financial institution, which may be served with process in Texas, by serving its Texas registered agent, Corporation Service Company, at 211 East 7th Street, Suite 620, Austin, Texas 78701.
6. RoundPoint is a foreign for-profit corporation, which may be served with process in Texas, by serving its Texas registered agent, Corporation Service Company, at 211 East 7th Street, Suite 620, Austin, Texas 78701.
7. SFC is a foreign limited liability company, which may be served with process in Texas, by serving its Texas registered agent, National Registered Agents, Inc., at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.
8. Nicolas is a natural person, who may be served with process in Texas at his usual place of abode, which is located at 9531 Chelmsford, San Antonio, Texas 78239.
9. Sebastian is a natural person, who may be served with process in Texas at his usual place of abode, which is located at 9531 Chelmsford, San Antonio, Texas 78239.

C-0668-20-H

10. Equisolar is a California for-profit corporation, which may be served with process in Texas, by serving its Texas registered agent, Registered Agents Inc., at 5900 Balcones Drive, Suite 100, Austin, Texas 78731.
11. At times relevant to this case, Plaintiffs have been owners of two residential properties (the "Properties") in Hidalgo County, Texas. The Properties are located at 11074 E. Highway 107, Edinburg, Texas 78542, and 704 E. Mahl Street, Edinburg, Texas 78539.
12. At times relevant to this case, Defendants were in the business of selling to their customers, for profit, certain goods, services and/or credits, to enable their customers to own and operate electrical energy generating equipment.
13. Defendants sold to Plaintiffs, and Plaintiffs purchased from Defendants, certain goods, services and credits (collectively the "GSC"), so that the Properties could be used by Plaintiffs with the electrical energy generated by the GSC.
14. Defendants held themselves out to Plaintiffs as experts with respect to the GSC, in order to induce Plaintiffs to rely upon Defendants in deciding whether or not to purchase th GSC.

C-0668-20-H

15. Defendants held themselves out to Plaintiffs as experts with respect to the GSC, in order to induce Plaintiffs to purchase the GSC.
16. Plaintiffs are not experts with respect to the GSC, and made known to Defendants that Plaintiffs are not experts with respect to the GSC.
17. Plaintiffs are not experts with respect to the GSC, and made known to Defendants that Plaintiffs were therefore relying upon Defendants' expertise with respect to the GSC, in agreeing to purchase the GSC.
18. Prior to Plaintiffs' dealings with Defendants, Plaintiffs purchased from certain electric service providers (the "ES Providers") all of the electrical energy needed by Plaintiffs to use the Properties.
19. In their dealings with Plaintiffs, Defendants intentionally and deceitfully misled Plaintiffs into believing that the GSC would generate as much electrical energy as Plaintiffs had been purchasing from the ES Providers in connection with Plaintiffs' use of the Properties.
20. Defendants misled Plaintiffs in such manner, in order to induce Plaintiffs to purchase the GSC.
21. As a result of the course of dealings between Defendants and Plaintiffs, Plaintiffs reasonably believed that the GSC would generate as much

C-0668-20-H

electrical energy as Plaintiffs had been purchasing from the ES Providers in connection with Plaintiffs' use of the Properties.

22. Contrary to what Defendants misled Plaintiffs into believing, the GSC are not capable of generating, and will not generate, as much electrical energy as Plaintiffs had been purchasing from the ES Providers in connection with Plaintiffs' use of the Properties.
23. In their dealings with Plaintiffs, Defendants intentionally and deceitfully misled Plaintiffs into believing that by buying the GSC, the total costs to Plaintiffs, of electrical energy needed by Plaintiffs to use the Properties, would be reduced.
24. Defendants misled Plaintiffs in such manner, in order to induce Plaintiffs to purchase the GSC.
25. As a result of the course of dealings between Defendants and Plaintiffs, Plaintiffs reasonably believed that by buying the GSC, the total costs to Plaintiffs, of electrical energy needed by Plaintiffs to use the Properties, would be reduced.
26. Contrary to what Defendants misled Plaintiffs into believing, by buying the GSC, the total costs to Plaintiffs, of electrical energy needed by

C-0668-20-H

Plaintiffs to use the Properties, were not reduced.

27. In their dealings with Plaintiffs, Defendants intentionally and deceitfully misled Plaintiffs into believing that by buying the GSC, Plaintiffs would become entitled to credits and/or deductions with which to reduce Plaintiffs' federal income tax liability.
28. Defendants misled Plaintiffs in such manner, in order to induce Plaintiffs to purchase the GSC.
29. As a result of the course of dealings between Defendants and Plaintiffs, Plaintiffs reasonably believed that by buying the GSC, Plaintiffs would become entitled to credits and/or deductions with which to reduce Plaintiffs' federal income tax liability.
30. Contrary to what Defendants misled Plaintiffs into believing, by buying the GSC, Plaintiffs did not become entitled to credits and/or deductions with which to reduce Plaintiffs' federal income tax liability.
31. Defendants each received a pecuniary benefit as a result of Defendants' above-described fraudulent conduct.
32. Defendants similarly defrauded other purchasers (the "Other Targets") of goods, services and credits, which were purchased by the Other

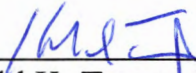
C-0668-20-H

Targets in efforts to reduce costs of electrical energy.

33. Defendants are jointly and severally liable to Plaintiffs for Plaintiffs' benefit-of-the-bargain damages caused by Defendants' conduct.
34. Defendants are jointly and severally liable to Plaintiffs, for Plaintiffs' out-of-pocket damages caused by Defendants' conduct.
35. Defendants are jointly and severally liable to Plaintiffs, for Plaintiffs' mental anguish damages caused by Defendants' conduct.
36. Plaintiffs' damages made subjects of this case are, as to each Plaintiff, within the jurisdictional limits of the Court.
37. Defendants are severally liable to Plaintiffs for exemplary damages, pursuant to Texas Civil Practice & Remedies Code Chapter 41.
38. Plaintiffs demand a trial by jury of all disputed issues of fact.
39. Wherefore, premises considered, Plaintiffs respectfully pray that the Court render judgment in favor of Plaintiffs and against Defendants, for compensatory damages, exemplary damages, pre-judgment interest, costs of court and post-judgment interest, and that the Court grant Plaintiffs such additional relief, to which Plaintiffs may show legal entitlement.

C-0668-20-H

Respectfully submitted,



Harold K. Tummel
State Bar No. 20286675
S.D. Tex. No. 11901
ken@tummelcasso.com

Lydia Casso Tummel
State Bar No. 00791830
S.D. Tex. No. 18782
lydia@tummelcasso.com

Tummel & Casso
7001 N. 10th Street, Suite 201
McAllen, Texas 78504
Telephone: (956) 664-2222
Telecopier: (956) 664-0522

ATTORNEYS FOR PLAINTIFFS



LAURA HINOJOSA

HIDALGO COUNTY DISTRICT CLERK

Greetings:

Attached you will find the service requested.

May this serve to inform you that service has been issued. Please proceed in attaching any file stamped documents that need to be served on your issued service.

Please note, the link you are about to open is a "live link" notification. Please ensure you are printing the service which includes our clerk's signature and the State Seal. If you are opening a document without the official certification (signature and seal), please close the window until the document is processed accordingly. This may take a few minutes.

* When serving protective orders, please DO NOT serve the TCIC form to respondent.

We appreciate the opportunity to assist you. Please contact our office if you have any questions or require additional information.

Sincerely,

A handwritten signature in cursive script that reads "Laura Hinojosa".

Laura Hinojosa
Hidalgo County District Clerk

NOTICE: Pursuant to TRCP 126: Statement of Inability to Afford Payment of Court Costs or an Appeal Bond filed = NO

C-0668-20-H
389TH DISTRICT COURT, HIDALGO COUNTY, TEXAS

CITATION
THE STATE OF TEXAS

NOTICE TO DEFENDANT: You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty (20) days after you were served with this citation and petition, a default judgment may be taken against you.

BIG STAR BUILDERS, INC.
C/O REGISTERED AGENTS INC.
5900 BALCONES DRIVE, STE. 100
AUSTIN, TEXAS 78731

You are hereby commanded to appear by filing a written answer to the **PLAINTIFFS' ORIGINAL PETITION** on or before 10:00 o'clock a.m. on the Monday next after the expiration of twenty (20) days after the date of service hereof, before the **Honorable Letty Lopez, 389th District Court** of Hidalgo County, Texas at the Courthouse at 100 North Closner, Edinburg, Texas 78539.

Said petition was filed on this the 21st day of February, 2020 and a copy of same accompanies this citation. The file number and style of said suit being C-0668-20-H, **ROGELIO QUINTERO, CYNTHIA QUINTERO VS. BIG STAR BUILDERS, INC.,SYNOVUS BANK,ROUNDPOINT MORTGAGE COMPANY,SERVICE FINANCE COMPANY, LLC,NICOLAS QUINTERO,JUAN SEBASTIAN QUINTERO,EQUISOLAR, INC.**

Said Petition was filed in said court by Attorney **HAROLD K. TUMMEL; 7001 N 10TH ST, SUITE 201 MCALLEN TX 78504.**

The nature of the demand is fully shown by a true and correct copy of the petition accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at Edinburg, Texas on this the 24th day of February, 2020.

LAURA HINOJOSA, DISTRICT CLERK
100 N. CLOSNER, EDINBURG, TEXAS
HIDALGO COUNTY, TEXAS



IRIS RAMIREZ, DEPUTY CLERK



C-0668-20-H
OFFICER'S RETURN

Came to hand on ____ of _____, 202____ at ____ o'clock ____ .m. and executed in _____ County, Texas by delivering to each of the within named Defendant in person, a true copy of this citation, upon which I endorsed the date of delivery to said Defendant together with the accompanying copy of the _____ (petition) at the following times and places, to-wit:

NAME	DATE	TIME	PLACE

And not executed as to the defendant, _____ the diligence used in finding said defendant, being: _____ and the cause of failure to execute this process is: _____ and the information received as to the whereabouts of said defendant, being: _____. I actually and necessarily traveled _____ miles in the service of this citation, in addition to any other mileage I may have traveled in the service of other process in the same case during the same trip.

Fees: serving ... copy(s) \$ _____
miles\$ _____

DEPUTY

**COMPLETE IF YOU ARE PERSON OTHER THAN A SHERIFF,
CONSTABLE OR CLERK OF THE COURT**

In accordance to Rule 107, the officer or authorized person who serves or attempts to serve a citation must sign the return. If the return is signed by a person other than a sheriff, constable or the clerk of the court, the return must either be verified or be signed under the penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is _____, my date of birth is _____ and the address is _____, and I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED in _____ County, State of Texas, on the _____ day of _____, 202____.

Declarant"

If Certified by the Supreme Court of Texas
Date of Expiration / PSC Number

NOTICE: Pursuant to TRCP 126: Statement of Inability to Afford Payment of Court Costs or an Appeal Bond filed = NO

C-0668-20-H
389TH DISTRICT COURT, HIDALGO COUNTY, TEXAS

CITATION
THE STATE OF TEXAS

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SYNOVUS BANK
REGISTERED AGENT, CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701

You are hereby commanded to appear by filing a written answer to the **PLAINTIFFS' ORIGINAL PETITION** on or before 10:00 o'clock a.m. on the Monday next after the expiration of twenty (20) days after the date of service hereof, before the **Honorable Letty Lopez, 389th District Court** of Hidalgo County, Texas at the Courthouse at 100 North Closner, Edinburg, Texas 78539.

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Said Petition was filed in said court by Attorney **HAROLD K. TUMMEL; 7001 N 10TH ST, SUITE 201 MCALLEN TX 78504.**

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The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

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LAURA HINOJOSA, DISTRICT CLERK
100 N. CLOSNER, EDINBURG, TEXAS
HIDALGO COUNTY, TEXAS



IRIS RAMIREZ, DEPUTY CLERK



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ROUNDPOINT MORTGAGE COMPANY
REGISTERED AGENT, CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701

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**CITATION
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**SERVICE FINANCE COMPANY, LLC
REGISTERED AGENT, NATIONAL REGISTERED AGENTS, INC.
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201**

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NICOLAS QUINTERO
9531 CHELMSFORD
SAN ANTONIO, TEXAS 78239

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JUAN SEBASTIAN QUINTERO
9531 CHELMSFORD
SAN ANTONIO, TEXAS 78239

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Came to hand on ____ of _____, 202____ at ____ o'clock ____ .m. and executed in _____ County, Texas by delivering to each of the within named Defendant in person, a true copy of this citation, upon which I endorsed the date of delivery to said Defendant together with the accompanying copy of the _____ (petition) at the following times and places, to-wit:

NAME	DATE	TIME	PLACE

And not executed as to the defendant, _____ the diligence used in finding said defendant, being: _____ and the cause of failure to execute this process is: _____ and the information received as to the whereabouts of said defendant, being: _____. I actually and necessarily traveled _____ miles in the service of this citation, in addition to any other mileage I may have traveled in the service of other process in the same case during the same trip.

Fees: serving ... copy(s) \$ _____
miles\$ _____

DEPUTY

**COMPLETE IF YOU ARE PERSON OTHER THAN A SHERIFF,
CONSTABLE OR CLERK OF THE COURT**

In accordance to Rule 107, the officer or authorized person who serves or attempts to serve a citation must sign the return. If the return is signed by a person other than a sheriff, constable or the clerk of the court, the return must either be verified or be signed under the penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is _____, my date of birth is _____ and the address is _____, and I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED in _____ County, State of Texas, on the _____ day of _____, 202____.

Declarant"

If Certified by the Supreme Court of Texas
Date of Expiration / PSC Number

NOTICE: Pursuant to TRCP 126: Statement of Inability to Afford Payment of Court Costs or an Appeal Bond filed = NO

C-0668-20-H
389TH DISTRICT COURT, HIDALGO COUNTY, TEXAS

CITATION
THE STATE OF TEXAS

NOTICE TO DEFENDANT: You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty (20) days after you were served with this citation and petition, a default judgment may be taken against you.

EQUISOLAR, INC
C/O REGISTERED AGENTS INC.
5900 BALCONES DRIVE, STE. 100
AUSTIN, TEXAS 78731

You are hereby commanded to appear by filing a written answer to the **PLAINTIFFS' ORIGINAL PETITION** on or before 10:00 o'clock a.m. on the Monday next after the expiration of twenty (20) days after the date of service hereof, before the **Honorable Letty Lopez, 389th District Court** of Hidalgo County, Texas at the Courthouse at 100 North Closner, Edinburg, Texas 78539.

Said petition was filed on this the 21st day of February, 2020 and a copy of same accompanies this citation. The file number and style of said suit being C-0668-20-H, **ROGELIO QUINTERO, CYNTHIA QUINTERO VS. BIG STAR BUILDERS, INC.,SYNOVUS BANK,ROUNDPOINT MORTGAGE COMPANY,SERVICE FINANCE COMPANY, LLC,NICOLAS QUINTERO,JUAN SEBASTIAN QUINTERO,EQUISOLAR, INC.**

Said Petition was filed in said court by Attorney **HAROLD K. TUMMEL; 7001 N 10TH ST, SUITE 201 MCALLEN TX 78504.**

The nature of the demand is fully shown by a true and correct copy of the petition accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at Edinburg, Texas on this the 24th day of February, 2020.

LAURA HINOJOSA, DISTRICT CLERK
100 N. CLOSNER, EDINBURG, TEXAS
HIDALGO COUNTY, TEXAS



IRIS RAMIREZ, DEPUTY CLERK



C-0668-20-H
OFFICER'S RETURN

Came to hand on ____ of _____, 202____ at ____ o'clock ____ .m. and executed in _____ County, Texas by delivering to each of the within named Defendant in person, a true copy of this citation, upon which I endorsed the date of delivery to said Defendant together with the accompanying copy of the _____ (petition) at the following times and places, to-wit:

NAME	DATE	TIME	PLACE

And not executed as to the defendant, _____ the diligence used in finding said defendant, being: _____ and the cause of failure to execute this process is: _____ and the information received as to the whereabouts of said defendant, being: _____. I actually and necessarily traveled _____ miles in the service of this citation, in addition to any other mileage I may have traveled in the service of other process in the same case during the same trip.

Fees: serving ... copy(s) \$ _____
miles\$ _____

DEPUTY

**COMPLETE IF YOU ARE PERSON OTHER THAN A SHERIFF,
CONSTABLE OR CLERK OF THE COURT**

In accordance to Rule 107, the officer or authorized person who serves or attempts to serve a citation must sign the return. If the return is signed by a person other than a sheriff, constable or the clerk of the court, the return must either be verified or be signed under the penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is _____, my date of birth is _____ and the address is _____, and I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED in _____ County, State of Texas, on the _____ day of _____, 202____.

Declarant"

If Certified by the Supreme Court of Texas
Date of Expiration / PSC Number

CASE NO. C-0668-20-H

ROGELIO QUINTERO, ET AL.	§	IN THE DISTRICT COURT
	§	
V.	§	HIDALGO COUNTY, TEXAS
	§	
BIG STAR BUILDERS, INC.,	§	
ET AL.	§	389TH JUDICIAL DISTRICT

PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now come Rogelio Quintero and Cynthia Quintero, Plaintiffs, complaining of Big Star Builders, Inc. ("BSB"), Synovus Bank ("Synovus"), RoundPoint Mortgage Company ("RoundPoint"), Service Finance Company, LLC ("SFC"), Nicolas Quintero ("Nicolas"), Juan Sebastian Quintero ("Sebastian"), and Equisolar, Inc. ("Equisolar"), Defendants, and would respectfully show to the Court as follows:

1. Plaintiffs intend that discovery in this case be conducted pursuant to Texas Rule of Civil Procedure ("TRCP") 190.4.
2. Pursuant to TRCP 193.7, Plaintiffs hereby give notice of intent to use at hearings and trial any and all things produced to Plaintiffs in this case.
3. Plaintiffs are natural persons, who reside in Hidalgo County, Texas.

4. BSB is a California for-profit corporation, which may be served with process in Texas, by serving its Texas registered agent, Registered Agents Inc., at 5900 Balcones Drive, Ste. 100, Austin, Texas 78731.
5. Synovus is a foreign financial institution, which may be served with process in Texas, by serving its Texas registered agent, Corporation Service Company, at 211 East 7th Street, Suite 620, Austin, Texas 78701.
6. RoundPoint is a foreign for-profit corporation, which may be served with process in Texas, by serving its Texas registered agent, C T Corporation System, at 1999 Bryan St., Ste. 900, Dallas, Texas 75201.
7. SFC is a foreign limited liability company, which may be served with process in Texas, by serving its Texas registered agent, National Registered Agents, Inc., at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.
8. Nicolas is a natural person, who may be served with process in Texas at his usual place of abode, which is located at 9531 Chelmsford, San Antonio, Texas 78239.
9. Sebastian is a natural person, who may be served with process in Texas at his usual place of abode, which is located at 9531 Chelmsford, San Antonio, Texas 78239.

10. Equisolar is a California for-profit corporation, which may be served with process in Texas, by serving its Texas registered agent, Registered Agents Inc., at 5900 Balcones Drive, Suite 100, Austin, Texas 78731.
11. At times relevant to this case, Plaintiffs have been owners of two residential properties (the “Properties”) in Hidalgo County, Texas. The Properties are located at 11074 E. Highway 107, Edinburg, Texas 78542, and 704 E. Mahl Street, Edinburg, Texas 78539.
12. At times relevant to this case, Defendants were in the business of selling to their customers, for profit, certain goods, services and/or credits, to enable their customers to own and operate electrical energy generating equipment.
13. Defendants sold to Plaintiffs, and Plaintiffs purchased from Defendants, certain goods, services and credits (collectively the “GSC”), so that the Properties could be used by Plaintiffs with the electrical energy generated by the GSC.
14. Defendants held themselves out to Plaintiffs as experts with respect to the GSC, in order to induce Plaintiffs to rely upon Defendants in deciding whether or not to purchase th GSC.

15. Defendants held themselves out to Plaintiffs as experts with respect to the GSC, in order to induce Plaintiffs to purchase the GSC.
16. Plaintiffs are not experts with respect to the GSC, and made known to Defendants that Plaintiffs are not experts with respect to the GSC.
17. Plaintiffs are not experts with respect to the GSC, and made known to Defendants that Plaintiffs were therefore relying upon Defendants' expertise with respect to the GSC, in agreeing to purchase the GSC.
18. Prior to Plaintiffs' dealings with Defendants, Plaintiffs purchased from certain electric service providers (the "ES Providers") all of the electrical energy needed by Plaintiffs to use the Properties.
19. In their dealings with Plaintiffs, Defendants intentionally and deceitfully misled Plaintiffs into believing that the GSC would generate as much electrical energy as Plaintiffs had been purchasing from the ES Providers in connection with Plaintiffs' use of the Properties.
20. Defendants misled Plaintiffs in such manner, in order to induce Plaintiffs to purchase the GSC.
21. As a result of the course of dealings between Defendants and Plaintiffs, Plaintiffs reasonably believed that the GSC would generate as much

electrical energy as Plaintiffs had been purchasing from the ES Providers in connection with Plaintiffs' use of the Properties.

22. Contrary to what Defendants misled Plaintiffs into believing, the GSC are not capable of generating, and will not generate, as much electrical energy as Plaintiffs had been purchasing from the ES Providers in connection with Plaintiffs' use of the Properties.
23. In their dealings with Plaintiffs, Defendants intentionally and deceitfully misled Plaintiffs into believing that by buying the GSC, the total costs to Plaintiffs, of electrical energy needed by Plaintiffs to use the Properties, would be reduced.
24. Defendants misled Plaintiffs in such manner, in order to induce Plaintiffs to purchase the GSC.
25. As a result of the course of dealings between Defendants and Plaintiffs, Plaintiffs reasonably believed that by buying the GSC, the total costs to Plaintiffs, of electrical energy needed by Plaintiffs to use the Properties, would be reduced.
26. Contrary to what Defendants misled Plaintiffs into believing, by buying the GSC, the total costs to Plaintiffs, of electrical energy needed by

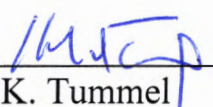
Plaintiffs to use the Properties, were not reduced.

27. In their dealings with Plaintiffs, Defendants intentionally and deceitfully misled Plaintiffs into believing that by buying the GSC, Plaintiffs would become entitled to credits and/or deductions with which to reduce Plaintiffs' federal income tax liability.
28. Defendants misled Plaintiffs in such manner, in order to induce Plaintiffs to purchase the GSC.
29. As a result of the course of dealings between Defendants and Plaintiffs, Plaintiffs reasonably believed that by buying the GSC, Plaintiffs would become entitled to credits and/or deductions with which to reduce Plaintiffs' federal income tax liability.
30. Contrary to what Defendants misled Plaintiffs into believing, by buying the GSC, Plaintiffs did not become entitled to credits and/or deductions with which to reduce Plaintiffs' federal income tax liability.
31. Defendants each received a pecuniary benefit as a result of Defendants' above-described fraudulent conduct.
32. Defendants similarly defrauded other purchasers (the "Other Targets") of goods, services and credits, which were purchased by the Other

Targets in efforts to reduce costs of electrical energy.

33. Defendants are jointly and severally liable to Plaintiffs for Plaintiffs' benefit-of-the-bargain damages caused by Defendants' conduct.
34. Defendants are jointly and severally liable to Plaintiffs, for Plaintiffs' out-of-pocket damages caused by Defendants' conduct.
35. Defendants are jointly and severally liable to Plaintiffs, for Plaintiffs' mental anguish damages caused by Defendants' conduct.
36. Plaintiffs' damages made subjects of this case are, as to each Plaintiff, within the jurisdictional limits of the Court.
37. Defendants are severally liable to Plaintiffs for exemplary damages, pursuant to Texas Civil Practice & Remedies Code Chapter 41.
38. Plaintiffs demand a trial by jury of all disputed issues of fact.
39. Wherefore, premises considered, Plaintiffs respectfully pray that the Court render judgment in favor of Plaintiffs and against Defendants, for compensatory damages, exemplary damages, pre-judgment interest, costs of court and post-judgment interest, and that the Court grant Plaintiffs such additional relief, to which Plaintiffs may show legal entitlement.

Respectfully submitted,



Harold K. Tummel

State Bar No. 20286675

S.D. Tex. No. 11901

ken@tummelcasso.com

Lydia Casso Tummel

State Bar No. 00791830

S.D. Tex. No. 18782

lydia@tummelcasso.com

Tummel & Casso

7001 N. 10th Street, Suite 201

McAllen, Texas 78504

Telephone: (956) 664-2222

Telecopier: (956) 664-0522

ATTORNEYS FOR PLAINTIFFS

7001 North 10th Street, Suite 201
McAllen, Texas
78504

Tummel & Casso

Attorneys At Law
Telephone 956-664-2222
Telecopier 956-664-0522

1 South Path
Nissequogue, New York
11780

March 18, 2020

Clerk of the Court
389th Judicial District
Hidalgo County Court
100 N. Closner Street
Edinburg, Texas 78539

Via E-file

Re: Case No. C-0668-20-H
Rogelio Quintero, et al., vs. Big Star Builders, Inc., et al.

Dear Sir or Madam:

Please issue a new Citation for Defendant, RoundPoint, and email same to the undersigned at Email: rem@tummelcasso.com. The fee has been paid.

Thank you for your assistance to this request.

Respectfully yours,
Rosaelena Montalvo
Legal Secretary

HKT:rem



LAURA HINOJOSA

HIDALGO COUNTY DISTRICT CLERK

Greetings:

Attached you will find the service requested.

May this serve to inform you that service has been issued. Please proceed in attaching any file stamped documents that need to be served on your issued service.

Please note, the link you are about to open is a "live link" notification. Please ensure you are printing the service which includes our clerk's signature and the State Seal. If you are opening a document without the official certification (signature and seal), please close the window until the document is processed accordingly. This may take a few minutes.

* When serving protective orders, please DO NOT serve the TCIC form to respondent.

We appreciate the opportunity to assist you. Please contact our office if you have any questions or require additional information.

Sincerely,

A handwritten signature in cursive script that reads "Laura Hinojosa".

Laura Hinojosa
Hidalgo County District Clerk

C-0668-20-H
389TH DISTRICT COURT, HIDALGO COUNTY, TEXAS

CITATION
THE STATE OF TEXAS

NOTICE TO DEFENDANT: You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty (20) days after you were served with this citation and petition, a default judgment may be taken against you.

ROUNDPOINT MORTGAGE COMPANY
TEXAS REGISTERED AGENT: C T CORPORATION SYSTEM
1999 BRYAN ST., STE. 900
DALLAS, TEXAS 75201

You are hereby commanded to appear by filing a written answer to the **PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION** on or before 10:00 o'clock a.m. on the Monday next after the expiration of twenty (20) days after the date of service hereof, before the **Honorable Letty Lopez, 389th District Court** of Hidalgo County, Texas at the Courthouse at 100 North Closner, Edinburg, Texas 78539.

Said petition was filed on this the 18TH day of MARCH, 2020 and a copy of same accompanies this citation. The file number and style of said suit being C-0668-20-H, **ROGELIO QUINTERO, CYNTHIA QUINTERO VS. BIG STAR BUILDERS, INC.,SYNOVUS BANK,ROUNDPOINT MORTGAGE COMPANY,SERVICE FINANCE COMPANY, LLC,NICOLAS QUINTERO,JUAN SEBASTIAN QUINTERO,EQUISOLAR, INC.**

Said Petition was filed in said court by Attorney **HAROLD K. TUMMEL; HAROLD K. TUMMEL, 7001 N 10TH ST STE 201 MCALLEN TX 78504.**

The nature of the demand is fully shown by a true and correct copy of the petition accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at Edinburg, Texas on this the 18th day of March, 2020.

LAURA HINOJOSA, DISTRICT CLERK
100 N. CLOSNER, EDINBURG, TEXAS
HIDALGO COUNTY, TEXAS



IRIS RAMIREZ, DEPUTY CLERK



C-0668-20-H
OFFICER'S RETURN

Came to hand on ____ of _____, 202__ at ____ o'clock ____ .m. and executed in _____ County, Texas by delivering to each of the within named Defendant in person, a true copy of this citation, upon which I endorsed the date of delivery to said Defendant together with the accompanying copy of the _____ (petition) at the following times and places, to-wit:

NAME	DATE	TIME	PLACE

And not executed as to the defendant, _____ the diligence used in finding said defendant, being: _____ and the cause of failure to execute this process is: _____ and the information received as to the whereabouts of said defendant, being: _____. I actually and necessarily traveled _____ miles in the service of this citation, in addition to any other mileage I may have traveled in the service of other process in the same case during the same trip.

Fees: serving ... copy(s) \$ _____
 miles\$ _____

DEPUTY

**COMPLETE IF YOU ARE PERSON OTHER THAN A SHERIFF,
 CONSTABLE OR CLERK OF THE COURT**

In accordance to Rule 107, the officer or authorized person who serves or attempts to serve a citation must sign the return. If the return is signed by a person other than a sheriff, constable or the clerk of the court, the return must either be verified or be signed under the penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is _____, my date of birth is _____ and the address is _____, and I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED in _____ County, State of Texas, on the _____ day of _____, 202__.

Declarant"

If Certified by the Supreme Court of Texas
Date of Expiration / PSC Number

CAUSE NO. C-0668-20-H

ROGELIO QUINTERO, ET AL.	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiffs,</i>	§	
	§	
VS.	§	HIDALGO COUNTY, TEXAS
	§	
BIG STAR BUILDERS, INC. ET AL.	§	
	§	
<i>Defendants.</i>	§	189 TH JUDICIAL DISTRICT

**DEFENDANT SERVICE FINANCE COMPANY, LLC'S
ORIGINAL ANSWER, SPECIAL EXCEPTIONS AND REQUESTS FOR DISCLOSURE**

Defendant Service Finance Company, LLC (“Defendant”), in the above-entitled and numbered cause files this its Original Answer, Special Exceptions and Requests for Disclosure to Plaintiffs’ Original Petition (“Petition”), and would respectfully show the Court the following:

**I.
GENERAL DENIAL**

Pursuant to Texas Rule of Civil Procedure 92, Defendant denies each and every, all and singular, material allegation contained in Plaintiffs’ Petition, and any supplements or amendments thereto, and demand strict proof of each and every allegation by a preponderance of the evidence.

**II.
SPECIAL EXCEPTIONS**

Plaintiffs’ Petition fails to give fair notice of Plaintiffs’ causes of action, as required by the Texas Rules of Civil Procedure. Texas courts follow a “fair notice” standard for pleading and an opposing party should be able to ascertain from the pleading the nature and basic issues of the controversy and what testimony will be relevant. Plaintiffs’ Petition fails to comply with this requirement for the reasons set forth below. TEX. R. CIV. P. 90, 91.

Defendant specially excepts to Plaintiffs’ Petition, as the allegations alleged because all allegations are vague, general, and indefinite, and Plaintiffs provide no factual or legal basis for

the same in order to give Defendant fair notice of Plaintiffs' claims. Plaintiffs lump all of their claims against all named defendants, without providing any specific factual allegations.

Specifically, in Paragraphs 13 – 15, 19 – 20, 23 – 24 and 27 – 28 of Plaintiffs' Petition, Plaintiffs fail to identify what actions or omissions this specific Defendant is allegedly responsible for, including how this Defendant held itself to be an expert with respect to certain goods, services and/or credits; how this Defendant induced Plaintiffs to purchase the goods, services and/or credits; how this Defendant intentionally and deceitfully misled Plaintiffs; how this Defendant induced Plaintiffs into purchasing goods, services and/or credits; how this Defendant intentionally and deceitfully misled Plaintiffs into believing that by buying the goods, services and/or credits the total costs to Plaintiffs of electrical energy needed by Plaintiffs to use would be reduced; how this Defendant misled Plaintiffs in order to induce Plaintiffs to purchase the goods, services and/or credits; and how this Defendant intentionally and deceitfully misled Plaintiffs into believing that by buying the goods, services and/or credits Plaintiffs would become entitled to credits and/or deductions with which to reduce Plaintiffs' federal income tax liability.

Plaintiffs further fail to comply with TEX. R. CIV. P. 47, to which Defendant specially excepts.

III. **AFFIRMATIVE DEFENSES**

Defendant pleads the following affirmative defenses to Plaintiffs' Petition (and any supplements or amendments thereto), but does not assume the burden of proof on any such defenses, except as otherwise required by law. Defendant reserves the right to assert additional defenses and to otherwise supplement or amend its Answer, as information becomes available. Each of these defenses are pled in the alternative, as all liability is denied:

1. Plaintiffs' claims are barred, in whole or in part, by the doctrine of waiver.

2. Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel.
3. Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' failure to mitigate Plaintiffs' damages.
4. Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.
5. Plaintiffs' claims are barred, in whole or in part, by the doctrine of ratification.
6. Plaintiffs' claim for exemplary damages is barred because Defendant did not act with the requisite "malice" towards Plaintiffs, including the requisite standard articulated by the Texas Supreme Court in *Safeshred, Inc. v. Martinez*, 365 S.W.3d 655 (Tex. 2012).
7. Defendant invokes §41.003, §41.007, and §41.008 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE to the extent any claim for and recovery of exemplary damages is subject to the standards, requirements, and caps thereunder.
8. Any damage, loss or liability sustained by Plaintiffs must be reduced, diminished and/or eliminated in proportion to the wrongful or negligent conduct of entities or individuals other than Defendant under the principles of equitable allocation, recoupment, set-off, proportionate responsibility and comparative fault.
9. The claims alleged in Plaintiffs' Petition fail because the acts and practices of persons or entities not associated with Defendant constitute intervening or superseding causes of the alleged damage, loss, or injury, if any, suffered by Plaintiffs.

IV. **REQUEST FOR DISCLOSURE**

Pursuant to Texas Rule of Civil Procedure 194, Defendant requests that Plaintiffs disclose, within 30 days of the service of this request, the information or material described in Rule 194.2.

**V.
PRAYER**

Defendant prays that Plaintiffs take nothing by way of their claims, and that this Court grant Defendant its attorneys' fees, costs and expenses, as allowed by law, and such other and further relief, whether at law or equity, to which Defendant may be justly entitled.

Respectfully submitted,

GORDON & REES, LLP

By: /s/ Andrew M. Scott
Andrew M. Scott
State Bar No. 24075042
Delia C. Rivera
State Bar No. 24091766
1900 West Loop South, Suite 1000
Houston, Texas 77027
(713) 961-3366 – Telephone
(713) 961-3938 – Facsimile
ascott@grsm.com
dcrivera@grsm.com

**ATTORNEYS FOR DEFENDANT
SERVICE FINANCE COMPANY, LLC**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served upon all counsel of record in accordance with the Texas Rules of Civil Procedure on this 23rd day of March 2020.

/s/ Andrew M. Scott
Andrew M. Scott

CASE NO. C-0668-20-H

ROGELIO QUINTERO, ET AL.	§	IN THE DISTRICT COURT
	§	
V.	§	HIDALGO COUNTY, TEXAS
	§	
BIG STAR BUILDERS, INC.,	§	
ET AL.	§	389TH JUDICIAL DISTRICT

PLAINTIFFS' SECOND AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now come Rogelio Quintero and Cynthia Quintero, Plaintiffs, complaining of Big Star Builders, Inc. ("BSB"), Synovus Bank ("Synovus"), RoundPoint Mortgage Company ("RoundPoint"), Service Finance Company, LLC ("SFC"), Nicolas Quintero ("Nicolas"), Juan Sebastian Quintero ("Sebastian"), and Equisolar, Inc. ("Equisolar"), Defendants, and would respectfully show to the Court as follows:

1. Plaintiffs intend that discovery in this case be conducted pursuant to Texas Rule of Civil Procedure ("TRCP") 190.4.
2. Pursuant to TRCP 193.7, Plaintiffs hereby give notice of intent to use at hearings and trial any and all things produced to Plaintiffs in this case.
3. Plaintiffs are natural persons, who reside in Hidalgo County, Texas.

4. BSB is a California for-profit corporation, which may be served with process in Texas, by serving its Texas registered agent, Registered Agents Inc., at 5900 Balcones Drive, Ste. 100, Austin, Texas 78731.
5. Synovus is a foreign financial institution, which may be served with process in Texas, by serving its Texas registered agent, Corporation Service Company, at 211 East 7th Street, Suite 620, Austin, Texas 78701.
6. RoundPoint is a foreign for-profit corporation, which may be served with process in Texas, by serving its Texas registered agent, CT Corporation System, at 1999 Bryan St., Suite 900, Dallas, Texas 75201.
7. SFC is a foreign limited liability company, which may be served with process in Texas, by serving its Texas registered agent, National Registered Agents, Inc., at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.
8. Nicolas is a natural person, who may be served with process in Texas at his usual place of abode, which is located at 9531 Chelmsford, San Antonio, Texas 78239.
9. Sebastian is a natural person, who may be served with process in Texas at his usual place of abode, which is located at 9531 Chelmsford, San Antonio, Texas 78239.

10. Equisolar is a California for-profit corporation, which may be served with process in Texas, by serving its Texas registered agent, Registered Agents Inc., at 5900 Balcones Drive, Suite 100, Austin, Texas 78731.
11. At times relevant to this case, Plaintiffs have been owners of two residential properties (the “Properties”) in Hidalgo County, Texas. The Properties are located at 11074 E. Highway 107, Edinburg, Texas 78542, and 704 E. Mahl Street, Edinburg, Texas 78539.
12. At times relevant to this case, Defendants were in the business of selling to their customers, for profit, certain goods, services and/or credits, to enable their customers to own and operate electrical energy generating equipment.
13. Defendants sold to Plaintiffs, and Plaintiffs purchased from Defendants, certain goods, services and credits (collectively the “GSC”), so that the Properties could be used by Plaintiffs with the electrical energy generated by the GSC.
14. Defendants held themselves out to Plaintiffs as experts with respect to the GSC, in order to induce Plaintiffs to rely upon Defendants in deciding whether or not to purchase th GSC.

15. Defendants held themselves out to Plaintiffs as experts with respect to the GSC, in order to induce Plaintiffs to purchase the GSC.
16. Plaintiffs are not experts with respect to the GSC, and made known to Defendants that Plaintiffs are not experts with respect to the GSC.
17. Plaintiffs are not experts with respect to the GSC, and made known to Defendants that Plaintiffs were therefore relying upon Defendants' expertise with respect to the GSC, in agreeing to purchase the GSC.
18. Prior to Plaintiffs' dealings with Defendants, Plaintiffs purchased from certain electric service providers (the "ES Providers") all of the electrical energy needed by Plaintiffs to use the Properties.
19. In their dealings with Plaintiffs, Defendants intentionally and deceitfully misled Plaintiffs into believing that the GSC would generate as much electrical energy as Plaintiffs had been purchasing from the ES Providers in connection with Plaintiffs' use of the Properties.
20. Defendants misled Plaintiffs in such manner, in order to induce Plaintiffs to purchase the GSC.
21. As a result of the course of dealings between Defendants and Plaintiffs, Plaintiffs reasonably believed that the GSC would generate as much

electrical energy as Plaintiffs had been purchasing from the ES Providers in connection with Plaintiffs' use of the Properties.

22. Contrary to what Defendants misled Plaintiffs into believing, the GSC are not capable of generating, and will not generate, as much electrical energy as Plaintiffs had been purchasing from the ES Providers in connection with Plaintiffs' use of the Properties.
23. In their dealings with Plaintiffs, Defendants intentionally and deceitfully misled Plaintiffs into believing that by buying the GSC, the total costs to Plaintiffs, of electrical energy needed by Plaintiffs to use the Properties, would be reduced.
24. Defendants misled Plaintiffs in such manner, in order to induce Plaintiffs to purchase the GSC.
25. As a result of the course of dealings between Defendants and Plaintiffs, Plaintiffs reasonably believed that by buying the GSC, the total costs to Plaintiffs, of electrical energy needed by Plaintiffs to use the Properties, would be reduced.
26. Contrary to what Defendants misled Plaintiffs into believing, by buying the GSC, the total costs to Plaintiffs, of electrical energy needed by

Plaintiffs to use the Properties, were not reduced.

27. In their dealings with Plaintiffs, Defendants intentionally and deceitfully misled Plaintiffs into believing that by buying the GSC, Plaintiffs would become entitled to credits and/or deductions with which to reduce Plaintiffs' federal income tax liability.
28. Defendants misled Plaintiffs in such manner, in order to induce Plaintiffs to purchase the GSC.
29. As a result of the course of dealings between Defendants and Plaintiffs, Plaintiffs reasonably believed that by buying the GSC, Plaintiffs would become entitled to credits and/or deductions with which to reduce Plaintiffs' federal income tax liability.
30. Contrary to what Defendants misled Plaintiffs into believing, by buying the GSC, Plaintiffs did not become entitled to credits and/or deductions with which to reduce Plaintiffs' federal income tax liability.
31. Defendants each received a pecuniary benefit as a result of Defendants' above-described fraudulent conduct.
32. Defendants similarly defrauded other purchasers (the "Other Targets") of goods, services and credits, which were purchased by the Other

Targets in efforts to reduce costs of electrical energy.

33. Defendants are jointly and severally liable to Plaintiffs for Plaintiffs' benefit-of-the-bargain damages caused by Defendants' conduct.
34. Defendants are jointly and severally liable to Plaintiffs, for Plaintiffs' out-of-pocket damages caused by Defendants' conduct.
35. Defendants are jointly and severally liable to Plaintiffs, for Plaintiffs' mental anguish damages caused by Defendants' conduct.
36. Plaintiffs' damages made subjects of this case are, as to each Plaintiff, within the jurisdictional limits of the Court.
37. Defendants are severally liable to Plaintiffs for exemplary damages, pursuant to Texas Civil Practice & Remedies Code Chapter 41.
38. Defendants' conduct involved false, misleading, and/or deceptive acts or practices, within the meaning of Texas Business & Commerce Code ("TBCC") Section 17.46(b)(5), which were producing causes of Plaintiffs' damages made subjects of this case.
39. Defendants' conduct involved false, misleading, and/or deceptive acts or practices, within the meaning of Texas Business & Commerce Code ("TBCC") Section 17.46(b)(12), which were producing causes of

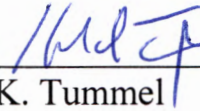
Plaintiffs' damages made subjects of this case.

40. Defendants' conduct involved false, misleading, and/or deceptive acts or practices, within the meaning of Texas Business & Commerce Code ("TBCC") Section 17.46(b)(24), which were producing causes of Plaintiffs' damages made subjects of this case.
41. Defendants' conduct involved unconscionable acts and/or practices, within the meaning of Texas Business & Commerce Code ("TBCC") Section 17.45(5), which were producing causes of Plaintiffs' damages made subjects of this case.
42. Defendants' conduct was engaged in knowingly, within the meaning of TBCC Section 17.45(6).
43. Defendants' conduct was engaged in intentionally, within the meaning of TBCC Section 17.45(13).
44. Defendants are liable to Plaintiffs in amounts equal to Plaintiffs' economic damages made subjects of this case, pursuant to TBCC Sections 17.50(a)(1), 17.50(a)(3), and 17.50(b)(1).
45. Defendants are liable to Plaintiffs in amounts equal to Plaintiffs' mental anguish damages made subjects of this case, pursuant to TBCC Sections

17.50(a)(1), 17.50(a)(3), and 17.50(b)(1).

46. Defendants are liable to Plaintiffs for statutory penalty damages, pursuant to TBCC Section 17.50(b)(1).
47. Defendants are liable to Plaintiffs for reasonable and necessary attorneys' fees, pursuant to TBCC Section 17.50(d).
48. Defendants are liable to Plaintiffs for court costs, pursuant to TBCC Section 17.50(d).
49. Plaintiffs demand a trial by jury of all disputed issues of fact.
50. Wherefore, premises considered, Plaintiffs respectfully pray that the Court render judgment in favor of Plaintiffs and against Defendants, for compensatory damages, statutory penalty damages, exemplary damages, pre-judgment interest, costs of court and post-judgment interest, and that the Court grant Plaintiffs such additional relief, to which Plaintiffs may show legal and/or equitable entitlement.

Respectfully submitted,



Harold K. Tummel

State Bar No. 20286675

S.D. Tex. No. 11901

ken@tummelcasso.com

Lydia Casso Tummel

State Bar No. 00791830

S.D. Tex. No. 18782

lydia@tummelcasso.com

Tummel & Casso

7001 N. 10th Street, Suite 201

McAllen, Texas 78504

Telephone: (956) 664-2222

Telecopier: (956) 664-0522

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

A true copy of this instrument was served on or about March 23, 2020, as follows:

Person Served	Manner of Service
Big Star Builders, Inc. c/o Stephan Mihalovits 15303 Ventura Boulevard Suite 1650 Sherman Oaks, California 91403	<i>Via E-File/E-Serve</i> <i><u>generalcounsel@bigstarbuilders.com</u></i>
Equisolar, Inc. c/o Registered Agents Inc. 5900 Balcones Drive, Suite 100 Austin, TX 78731	<i>Via First Class Mail</i>
RoundPoint Mortgage Company c/o C T Corporation System 1999 Bryan Street, Suite 900 Dallas, Texas 75201	<i>Via First Class Mail</i>
Mr. Andrew M. Scott Ms. Delia C. Rivera GORDON & REES, LLP 1900 W. Loop South, Suite 1000 Houston, Texas 77027	<i>Via E-Serve</i> <i><u>ascott@grsm.com</u></i> <i><u>dcrivera@grsm.com</u></i>
Synovus Bank c/o Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company 211 E. 7 th Street, Suite 620 Austin, TX 78701	<i>Via First Class Mail</i>
Nicolas Quintero 9531 Chelmsford San Antonio, TX 78239	<i>Via First Class Mail</i>

Sebastian Quintero 9531 Chelmsford San Antonio, TX 78239	<i>Via First Class Mail</i>
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/s/Harold K. Tummel

CAUSE NO. C-0668-20-H

ROGELIO QUINTERO, ET AL.,	§	IN THE DISTRICT COURT
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	389TH JUDICIAL DISTRICT
	§	
BIG STAR BUILDERS, INC., ET AL.	§	
	§	
	§	
Defendants.	§	HIDALGO COUNTY, TEXAS

**DEFENDANT SYNOVUS BANK’S SPECIAL EXCEPTIONS, ORIGINAL ANSWER,
AND AFFIRMATIVE DEFENSES TO PLAINTIFFS’ SECOND AMENDED PETITION**

TO THE HONORABLE JUDGE:

COMES NOW Defendant Synovus Bank (“Defendant” or “Synovus”), Defendant in the above-styled action, and files this its Special Exceptions, Original Answer, and Affirmative Defenses to Plaintiffs’ Second Amended Petition, and shows the Court as follows:

SPECIAL EXCEPTIONS

I.

Defendant specially excepts to paragraphs 12-48 of Plaintiff’s Second Amended Petition (the “Petition”) wherein Plaintiffs allege that all Defendants are liable under the Texas DTPA and potentially common law fraud. The facts supporting these claims are not specified or broken out by the alleged conduct of any particular defendant, and so Defendant is left with no clear understanding of how these claims or these allegations are attributable to it specifically. Moreover, as Plaintiffs did not include any specific headings in their Petition, Defendant is unclear as to which claims or causes of action are being asserted against it. Texas law does not permit generalized allegations against multiple defendants. Accordingly, Plaintiff should be required to re-plead to clarify which specific

actions of Synovus are at issue with respect to these claims and these allegations.

ORIGINAL ANSWER

II.

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant hereby enters a general denial and demands that Plaintiffs be required to prove their allegations by a preponderance of the evidence.

AFFIRMATIVE DEFENSES

III.

By way of affirmative defense, Defendant asserts that Plaintiffs failed to mitigate damages.

IV.

Pleading further, in the alternative, Defendant affirmatively alleges that the incident(s) made the basis of this suit and Plaintiffs' damages, if any, were proximately caused by one or more third parties over whom Defendant had no control or right of control.

V.

Pleading further if such is necessary, and without admitting liability or responsibility, all of which is denied, Defendant asserts that the conduct of all parties to this lawsuit, including any settling parties and responsible third parties, should be compared by the court and jury under the doctrine of proportionate responsibility as set forth in the Texas Civil Practices and Remedies Code (including but not limited to §§ 33.001, 33.003, 33.004, 33.011, 33.012, 33.013, 33.015, and 33.016), and in the unlikely event Plaintiffs obtain any award of damages in this case, Defendant's liability, if any, for any such recovery should be limited to its respective percentage of proportionate responsibility in accordance with Chapter 33 of the Texas Civil Practice and Remedies Code.

VI.

Pleading further if such pleading is necessary, and without admitting liability or responsibility, all of which is denied, Defendant asserts that in the unlikely event it is found liable to Plaintiffs, it is entitled to a credit or offset for any and all sums Plaintiffs have received or may hereafter receive by way of any and all settlements arising from Plaintiffs' claims and/or alleged causes of action.

VII.

Pleading further if such is necessary, and without admitting liability or responsibility, all of which is denied, Defendant expressly reserves its rights under Chapters 32 and 33 of the Texas Civil Practice and Remedies Code regarding an election of credit and reduction in the amount of damages to be recovered by Plaintiffs, if any, in the event that Plaintiff settles with any other person or party.

VIII.

Defendant denies liability and especially that its alleged actions or omissions amount to gross negligence or that it is otherwise culpable in such a way as to support any award of punitive or exemplary damages. In the unlikely event the Court submits any such question to the trier of fact, Defendant affirmatively pleads all restrictions and limitations on such damages as provided by Chapter 41 of the Texas Civil Practice and Remedies Code and/or any applicable federal law.

IX.

Pleading further if such is necessary, and without admitting liability or responsibility, all of which is denied, in the unlikely event Plaintiff recovers an award of pre-judgment interest for unaccrued damages such an award would violate the following provisions, among others, of the Constitution of the State of Texas and the U.S. Constitution: (i) Trial by Jury, TEX. CONST. Art. I, §15; (ii) Due Process, U.S. CONST. AMEND. V and XIV, TEX. CONST. Art. I, §13; and (iii)

Constitutional Rights are Inviolable, TEX. CONST. Art. I, §28. Further, Defendant pleads the limitations for pre-judgment interest as set forth in the Texas Finance Code.

X.

Pleading further if such is necessary, and without admitting liability or responsibility, all of which is denied, Defendant asserts that Plaintiffs' claims and causes of action against Defendant are barred under the doctrine of estoppel, equitable estoppel and/or quasi-estoppel.

XI.

Pleading further if such is necessary, and without admitting liability or responsibility, all of which is denied, Defendant asserts that Plaintiffs' claims and causes of action against Defendant are barred under the doctrine of laches.

XII.

Pleading further if such is necessary, and without admitting liability or responsibility, all of which is denied, Defendant asserts that Plaintiffs' claims and causes of action against Defendant are barred under the doctrine of unjust enrichment.

XIII.

Pleading further if such is necessary, and without admitting liability or responsibility, all of which is denied, Defendant asserts that Plaintiffs' claims and causes of action against Defendant are barred, at least in part, under the FTC holder in due course rule. In particular, Plaintiff is not permitted to recover any damages beyond any sums paid under the contract.

XIV.

Pleading further if such is necessary, and without admitting liability or responsibility, all of which is denied, Defendant asserts that Plaintiff's claims and causes of action against Defendant are barred, at least in part, under the doctrine of accord and satisfaction.

XV.

Pleading further if such is necessary, and without admitting liability or responsibility, all of which is denied, Defendant asserts that Defendant is entitled to an offset for the full value of all benefits received by Plaintiffs under the transactions they are seeking to cancel.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendant Synovus Bank prays that Plaintiffs take nothing by this action and Defendant be dismissed with its costs, and for such other relief, both general and specific, at law or in equity, to which Defendant may be justly entitled.

Respectfully submitted,

**MACDONALD DEVIN ZIEGLER
MADDEN KENEFICK HARRIS, PC**

By: /s/ Sean W. Fleming
Sean W. Fleming
State Bar No. 24027250
sfleming@macdonalddevin.com
Lauren Lopez
Texas Bar No. 24078994
LLopez@MacdonaldDevin.com

3800 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270-2014
(214) 744-3300 (Telephone)
(214) 747-0942 (Facsimile)

**ATTORNEYS FOR DEFENDANT
SYNOVUS BANK**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 24, 2020, a copy of the foregoing pleading was forwarded via electronically to all counsel of record.

/s/ Sean W. Fleming
Sean W. Fleming

CAUSE NO. C-0668-20-H

ROGELIO QUINTERO, ET AL.	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiffs,</i>	§	
	§	
VS.	§	HIDALGO COUNTY, TEXAS
	§	
BIG STAR BUILDERS, INC. ET AL.	§	
	§	
<i>Defendants.</i>	§	189 TH JUDICIAL DISTRICT

**DEFENDANT SERVICE FINANCE COMPANY, LLC'S FIRST AMENDED ANSWER,
SPECIAL EXCEPTIONS, AFFIRMATIVE DEFENSES AND REQUESTS FOR
DISCLOSURE TO PLAINTIFFS' SECOND AMENDED PETITION**

Defendant Service Finance Company, LLC ("Defendant"), in the above-entitled and numbered cause files this its First Amended Answer, Special Exceptions, Affirmative Defenses and Requests for Disclosure to Plaintiffs' Second Amended Petition ("Petition"), and would respectfully show the Court the following:

**I.
GENERAL DENIAL**

Pursuant to Texas Rule of Civil Procedure 92, Defendant denies each and every, all and singular, material allegation contained in Plaintiffs' Petition, and any supplements or amendments thereto, and demand strict proof of each and every allegation by a preponderance of the evidence.

**II.
SPECIAL EXCEPTIONS**

Defendant specially excepts to paragraphs 12-48 of Plaintiffs' Second Amended Petition wherein Plaintiffs allege that all Defendants are liable under the Texas DTPA and potentially common law fraud. The facts supporting these claims are not specified or broken out by the alleged conduct of any particular defendant. As such, Defendant is left with no clear understanding of how these claims or these allegations are attributable to it specifically. Moreover, Plaintiffs failed

to include headings in their Petition, Defendant is unclear as to which claims and allegations are being asserted against it.

Plaintiffs' Petition fails to give fair notice of Plaintiffs' causes of action, as required by the Texas Rules of Civil Procedure. Texas courts follow a "fair notice" standard for pleading and an opposing party should be able to ascertain from the pleading the nature and basic issues of the controversy and what testimony will be relevant. Plaintiffs' Petition fails to comply with this requirement for the reasons set forth below. TEX. R. CIV. P. 90, 91.

Defendant specially excepts to Plaintiffs' Petition, as the allegations alleged because all allegations are vague, general, and indefinite, and Plaintiffs provide no factual or legal basis for the same in order to give Defendant fair notice of Plaintiffs' claims. Plaintiffs lump all of their claims against all named defendants, without providing any specific factual allegations.

Plaintiffs fail to identify what actions or omissions this specific Defendant is allegedly responsible for, including how this Defendant held itself to be an expert with respect to certain goods, services and/or credits; how this Defendant induced Plaintiffs to purchase the goods, services and/or credits; how this Defendant intentionally and deceitfully misled Plaintiffs; how this Defendant induced Plaintiffs into purchasing goods, services and/or credits; how this Defendant intentionally and deceitfully misled Plaintiffs into believing that by buying the goods, services and/or credits the total costs to Plaintiffs of electrical energy needed by Plaintiffs to use would be reduced; how this Defendant misled Plaintiffs in order to induce Plaintiffs to purchase the goods, services and/or credits; and how this Defendant intentionally and deceitfully misled Plaintiffs into believing that by buying the goods, services and/or credits Plaintiffs would become entitled to credits and/or deductions with which to reduce Plaintiffs' federal income tax liability.

Plaintiffs further fail to comply with TEX. R. CIV. P. 47, to which Defendant specially

excepts and Plaintiffs should be required to re-plead.

III.
AFFIRMATIVE DEFENSES

Defendant pleads the following affirmative defenses to Plaintiffs' Petition (and any supplements or amendments thereto), but does not assume the burden of proof on any such defenses, except as otherwise required by law. Defendant reserves the right to assert additional defenses and to otherwise supplement or amend its Answer, as information becomes available. Each of these defenses are pled in the alternative, as all liability is denied:

1. Plaintiffs' claims are barred, in whole or in part, by the doctrine of waiver.
2. Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel.
3. Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' failure to mitigate Plaintiffs' damages.
4. Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.
5. Plaintiffs' claims are barred, in whole or in part, by the doctrine of ratification.
6. Plaintiffs' claims are barred in whole or in part, by the doctrine of unjust enrichment.
7. Plaintiffs' claims are barred in whole or in part, by the doctrine of accord and satisfaction.
8. Plaintiffs' claim for exemplary damages is barred because Defendant did not act with the requisite "malice" towards Plaintiffs, including the requisite standard articulated by the Texas Supreme Court in *Safeshred, Inc. v. Martinez*, 365 S.W.3d 655 (Tex. 2012).
9. Defendant affirmatively alleges that the incident(s) made the basis of this suit and Plaintiff's damages, if any, were proximately caused by one or more third parties over whom Defendant had no control or right of control.

10. Defendant invokes §41.003, §41.007, and §41.008 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE to the extent any claim for and recovery of exemplary damages is subject to the standards, requirements, and caps thereunder.

11. Any damage, loss or liability sustained by Plaintiffs must be reduced, diminished and/or eliminated in proportion to the wrongful or negligent conduct of entities or individuals other than Defendant under the principles of equitable allocation, recoupment, set-off, proportionate responsibility and comparative fault in accordance with Chapter 33 of the Texas Civil Practice and Remedies Code.

12. Pleading further if such pleading is necessary, and without admitting liability or responsibility, all of which is denied, Defendant asserts that in the unlikely event it is found liable to Plaintiffs, it is entitled to a credit or offset for any and all sums Plaintiffs have received or may hereafter receive by way of any and all settlements arising from Plaintiffs' claims and/or alleged causes of action.

13. Pleading further if such is necessary, and without admitting liability or responsibility, all of which is denied, Defendant expressly reserves its rights under Chapters 32 and 33 of the Texas Civil Practice and Remedies Code regarding an election of credit and reduction in the amount of damages to be recovered by Plaintiffs, if any, in the event that Plaintiff settles with any other person or party.

14. Defendant denies liability and specially that its alleged actions or omissions amount to gross negligence or that it is otherwise culpable in such a way as to support any award of punitive or exemplary damages. In the unlikely event the Court submits any such question to the trier of fact, Defendant affirmatively pleads all restrictions and limitations on such damages as provided by Chapter 41 of the Texas Civil Practice and Remedies Code and/or any applicable federal law.

15. Pleading further if such is necessary, and without admitting liability or responsibility, all of which is denied, in the unlikely event Plaintiffs recover an award of pre-judgment interest for unaccrued damages such an award would violate the following provisions, among others, of the Constitution of the State of Texas and U.S. Constitution: (i) Trial by Jury, TEX. CONST. Art. I, 15; (ii) Due Process, U.S. CONST. AMEND. V and XIV, TEX. CONST. Art. I 13; and (iii) Constitutional Rights are Inviolable, TEX. CONST. Art. I, 28. Further, Defendant pleads the limitations for pre-judgment interest as set forth in the Texas Finance Code.

16. Pleading further if such is necessary, and without admitting liability or responsibility, all of which is denied, Defendant asserts that Plaintiffs' claims and causes of action against Defendant are barred, at least in part, under the Federal Trade Commission holder in due course rule. In particular, Plaintiffs are not permitted to recover any damages beyond any sums paid under the contract.

17. The claims alleged in Plaintiffs' Petition fail because the acts and practices of persons or entities not associated with Defendant constitute intervening or superseding causes of the alleged damage, loss, or injury, if any, suffered by Plaintiffs.

18. Pleading further if such is necessary, and without admitting liability or responsibility, all of which is denied, Defendant asserts that Defendant is entitled to an offset for the full value of all benefits received by Plaintiffs under the transaction they are seeking to cancel.

IV. **PRAYER**

Defendant prays that Plaintiffs take nothing by way of their claims, and that this Court grant Defendant its attorneys' fees, costs and expenses, as allowed by law, and such other and further relief, whether at law or equity, to which Defendant may be justly entitled.

Respectfully submitted,

GORDON & REES, LLP

By: /s/ Andrew M. Scott
Andrew M. Scott
State Bar No. 24075042
Delia C. Rivera
State Bar No. 24091766
1900 West Loop South, Suite 1000
Houston, Texas 77027
(713) 961-3366 – Telephone
(713) 961-3938 – Facsimile
ascott@grsm.com
dcrivera@grsm.com

**ATTORNEYS FOR DEFENDANT
SERVICE FINANCE COMPANY, LLC**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served upon all counsel of record in accordance with the Texas Rules of Civil Procedure on this 1st day of April 2020.

/s/ Andrew M. Scott
Andrew M. Scott